

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Theoharis C. Theoharides	Confirmation No.:	3055
Application No.:	10/811,826	Art Unit:	1655
Filed:	March 30, 2004	Examiner:	Leith, Patricia A.
Title:	ANTI-INFLAMMATORY COMPOSITIONS FOR MULTIPLE SCLEROSIS		

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PETITION TO ACCEPT AN UNINTENTIONALLY DELAYED PRIORITY CLAIM  
PURSUANT TO 37 C.F.R. § 1.78**

Dear Madam:

Applicant hereby petitions under 37 C.F.R. § 1.78(a)(3)<sup>1</sup> to accept an unintentionally delayed claim to priority under 35 U.S.C. § 120 in the above-referenced application.

Applicant filed a preliminary amendment at the time the instant application was filed (Appendix A). Through the preliminary amendment, Applicant attempted to amend the specification to reflect the priority claim of the instant application. However, because the priority claim in the preliminary amendment did not indicate the relationships between the applications, the priority claim was not entered. Applicant now seeks to correct this deficiency.

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<sup>1</sup> Applicant notes that 37 C.F.R. § 1.78, as cited in the Manual of Patent Examining Procedure, 8<sup>th</sup> Edition, July 2008 Revision ("MPEP"), does not reflect amendments made on August 21, 2007. Because the changes made to 37 C.F.R. 1.78(a) are applicable only to applications filed after November 21, 2007, we rely on the non-amended version of the rule for that section. See *Changes to Practice for Continued Examination Filings, Patent Applications Containing Patentably Indistinct Claims, and Examinations of Claims in Patent Applications*, 72 Fed. Reg. 46716 *et seq.* (Aug. 21, 2007). However, because the Federal Register was silent with regard to the applicability of 37 C.F.R. § 1.78(e), we understand that silence to mean that § 1.78(e) is also a correct channel through which to bring this Petition. Thus, Applicant believes either un-amended 1.78(a)(3) or current 1.78(e) to be the correct rule under which Applicant may bring this Petition. In the event that the Patent Office finds 37 C.F.R. § 1.78(a)(3) to be incorrect, Applicant respectfully requests that this Petition be considered under 37 C.F.R. § 1.78(e).

Applicant filed a Request for Continued Examination ("RCE") on September 24, 2008 in the instant application. In the RCE, Applicant attempted to amend the priority claim in order to correct the error noted above. However, because this amendment occurred after the time period allotted by 37 C.F.R. § 1.78(a)(2)(ii), Applicant must seek to amend the priority claim through this Petition before the amendment to the specification in the RCE will be entered.

Applicant respectfully submits that the delay in correcting the erroneous claim for priority in the instant application was unintentional. Applicant also respectfully submits that a bona fide attempt to claim priority was made in the preliminary amendment. *See* Appendix A. In fact, Applicant still claims priority to the same three applications that were claimed in the preliminary amendment, although now in the correct manner as required by 37 C.F.R. § 1.78(a)(2). The complete priority claim should read:

This application is a continuation-in-part application of PCT/US02/00476, filed January 3, 2002, which is a continuation-in-part application of U.S. Patent Application No. 09/771,669, filed January 30, 2001, now U.S. Patent No. 6,984,667, which is a continuation-in-part application of U.S. Patent Application No. 09/056,707, filed April 8, 1998, now U.S. Patent No. 6,689,748.

Applicant respectfully requests that this Petition be granted and the priority claim of the instant application be acknowledged in an Official Filing Receipt.

The Director is hereby authorized to charge Deposit Account No. 08-0219, under Order No. 2003133.126US1, the fee of \$1,410 filed herewith pursuant to 37 C.F.R. § 1.17(t).

Applicant believes no additional fees are due with this Petition. However, if a fee is due, or a credit is owed, the Director is hereby authorized to make them to our Deposit Account No. 08-0219, under Order No. 2003133.00126US1.

The Examiner is encouraged to call the undersigned at the telephone number given below to move this application towards allowance.

Respectfully submitted,

Dated: February 13, 2009

/Colleen Superko/  
Colleen Superko  
Registration No.: 39,850  
Attorney for Applicant

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## **APPENDIX A**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: application of:

Theoharis C. Theoharides

Group Art Unit: 1614

Filing date: TBA

Examiner: Charisse Evans

Serial No.: TBA

Priority from copending PCT/US02/00476, filed 01/03/2002,  
copending USSN 09/771,669, filed 01/30/2001, and USSN 09/056,707, filed  
4/8/1998, now USPN 6,689,748, issued 2/10/2004

For: Implanted Medical Devices With Anti-Inflammatory Coatings

PRELIMINARY AMENDMENT

Commissioner for Patents

Box 1450

Alexandria, VA 22313-1450

Mail Stop: DIV/CIP PATENT APPLICATION (1.53(b))

Sir:

Prior to examination, please replace the original title with:  
--Anti-Inflammatory Compositions for Multiple Sclerosis--

Prior to examination, please add after the title: --This application takes its  
priority from copending PCT/US02/00476, filed 01/03/2002,  
copending USSN 09/771,669, filed 01/30/2001, and USSN 09/056,707, filed  
4/8/1998, now USPN 6,689,748, issued 2/10/2004

Prior to examination of the attached patent application, please delete  
claims 1-39 recited therein, and replace with the following new claims:

40. A composition for protecting a subject from the inflammatory components of  
multiple sclerosis, said composition comprising non-bovine chondroitin sulfate,  
quercetin or myricetin, hydroxyzine, and, optionally, olive kernel extract, in a  
vehicle for oral administration.

41. The composition further comprising the optional injection of interferon-beta.

42. The composition according to claim 40, wherein said composition comprises,  
in mg/day, 50-300 each of non-bovine chondroitin sulfate, quercetin or myricetin,  
hydroxyzine, optionally 150-600 of olive kernel extract in a vehicle for oral  
administration.

43. The composition of claim 42 further comprising injecting 8 million IU interferon-beta on alternate days or 30 µg i.m. once weekly

44. A method of protecting multiple sclerosis patients against brain inflammatory processes, comprising the administration to said patients of the composition of claim 40.

45. A method of protecting multiple sclerosis patients against brain inflammatory processes, comprising the administration to said patients of the composition of claim and 41.

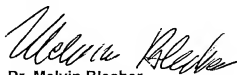
Remarks

It is the applicant's intent to limit the prosecution of this continuation-in-part/divisional patent application to multiple sclerosis. All elements of these claims are supported in the specification.

To accentuate this limitation, the title of this application is also being amended, as recited above.

Respectfully submitted,

03/30/2004



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